

Pongkhamsing, Chan

From: Brock, Joseph W NWS <Joseph.W.Brock@usace.army.mil>
Sent: Wednesday, October 29, 2014 3:09 PM
To: Pongkhamsing, Chan
Subject: RE: Shaw Creek - diversion, filling (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Chan,

I am coordinating with Jess Jordan in our Eastern WA office. The complainant really needs to give us an aerial photo / vicinity map marking exactly where the alleged work occurred, because it isn't clear.

Sincerely,

Joe Brock
Ecologist/Senior Scientist
Seattle District, U.S. Army Corps of Engineers Regulatory Branch, CENWS-OD-RG Post Office Box 3755 Seattle, Washington 98124-3755
phone: (206)764-6905
fax: (206)764-6602

-----Original Message-----

From: Pongkhamsing, Chan [mailto:Pongkhamsing.Chan@epa.gov]
Sent: Wednesday, October 29, 2014 2:14 PM
To: Brock, Joseph W NWS
Cc: Rave-Perkins, Krista; JRED461@ECY.WA.GOV; Susan Meyer (ECY) (sume461@ECY.WA.GOV)
Subject: [EXTERNAL] FW: Shaw Creek - diversion, filling

Hi Joe,

I forwarded you this complaint via our Citizen Complaints database yesterday. Below is additional information provided by the complainant, he mentioned that "the Corps is scheduled to conduct a site visit soon.."? Please forward to appropriate PM. I've also cut/pasted the original complaint email from Ecology at the end of this message.

Gratitude,

Chan Pongkhamsing

CWA 404 Enforcement Coordinator
Aquatic Resources Unit
Ecosystems, Tribal, and Public Affairs Office U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, ETPA-083
Seattle, Washington 98101
(206) 553-1806

From: Matthew Seaman [mailto:matthew142@msn.com]
Sent: Wednesday, October 29, 2014 7:05 AM
To: Pongkhamsing, Chan
Subject: Shaw Creek - diversion, filling

To: Chan Pengkhamsing

From: Matthew Seaman

Date: 10/29/14

Thank you for calling me with an initial discussion of the Shaw Creek diversion, filling, dewatering, etc. There will be three documents attached today. One document shows some of the recent destruction of Shaw Creek on the Radke parcel at 8910 Tieton Drive, Yakima, WA. A second document has two photo from the Bainter parcel where Shaw Creek has been diverted (with filling of critical areas). A third document is a fairly short note that I recently drafted; the purpose of the note was to provide an overview for a biology inspection of the stream. The biology site visit was orchestrated by the lead agents with the Shaw Creek NEPA project (a planned redirection of the stream at a future time).

From: Redfield-Wilder, Joye (ECY) [mailto:JRED461@ECY.WA.GOV <mailto:JRED461@ECY.WA.GOV>]
Sent: Tuesday, October 28, 2014 8:14 AM
To: MacIntyre, Mark; Holsman, Marianne
Subject: FW: Illegal movement of Shaw Creek; Illegal filling

This complainant is looking for someone in EPA to file this with... where shall I send him? He's already interacted with us. JOYE

From: Matthew Seaman [mailto:Matthew142@msn.com <mailto:Matthew142@msn.com>]
Sent: Monday, October 27, 2014 5:27 PM
To: Redfield-Wilder, Joye (ECY)
Subject: Re: Illegal movement of Shaw Creek; Illegal filling

To: Joye Redfield-Wilder

From: Matthew Seaman

Date: October 27, 2014

Re: Illegal relocation of Shaw Creek; illegal filling and excavations

At this point I am seeking help from Ecology regarding numerous illegal activities along Shaw Creek in the West Yakima Valley. You sent me a contact email of a coordinator. I used that email for a Notice of Complaint that I just sent. Do you also have a contact at the EPA? I wish to notify authorities at the federal level as well. Here is the email that I sent to the Ecology Coordinator:

To: Ecology - coordinator
From: Matthew Seaman
Date: October 27, 2014
Re: Illegal diversion of Shaw Creek and filling within the Shaw Creek FEMA 100-year Floodplain

This is an introductory email regarding an illegal diversion of Shaw Creek, illegal excavations, illegal filling, etc.

For 25 years I have lived directly above Shaw Creek, a DNR F-stream with habitat for Steelhead and Bull Trout (ESL species). Shaw Creek is located within the Shaw Creek FEMA 100-year Floodplain. Developers within the Bainter B-2 commercial zoning district, without permits, have significantly destroyed the watercourse and critical areas. My training is in macro-biology and medicine. I am not an attorney. However I have read a great deal about environmental law, critical area ordinances, and federal law such as the Clean Water Act.

Mr. Greg Bainter (9008 Tieton Drive, Yakima, WA 98908) began to severely damage Shaw Creek and the critical areas in 2012. At that time he proposed a so-called "Bainter Riparian Habitat Improvement Project" where he would be planting 14,000 Sq Ft of native vegetation along the stream; this project proposal was entirely bogus. He planted nothing. He obtained a critical area permit to plant this riparian vegetation and also added on the excavation of a dry flood channel. In a simple version of the story, Mr. Bainter did not obtain any other legal permits. He brought an excavator to the site in 2012 and diverted the waters of Shaw Creek into the so-called dry flood channel. Without legal permits, he added tons and tons of fill material to the historic watercourse of Shaw Creek, wetlands, wetland buffers, riparian buffer zone, and the Shaw Creek FEMA 100-year Floodplain. The purpose of filling the floodplain was to expand the Bainter B-2 commercial zoning district into the filled areas; this is clearly documented with hard evidence (a 2014 site plan). Mr. Bainter has continued to repeatedly mow all vegetation up to the high water mark of the watercourse. The altered hydrology has led to dewatering of the stream. There is evidence (photographs) that there may actually be drain fields used by Mr. Bainter to dewater the stream. The fish are all dead. There is only mud in the stream.

In the next parcel downstream is the next owner and developer within this commercial zoning district. This second property is owned by Mr. Glen Radke (8910 Tieton Dr., Yakima, WA 98908). On October 20, 2014 I observed that there was no water flowing in his portion of Shaw Creek. For 25 years I have seen perennial waters and have observed fish swimming in the pools. I observed excavator tire tracks, fresh evidence of dredging and stream excavation, destruction of wetlands, and destruction of pools containing fish. Fresh scars on the trees showed damage from the excavations. On October 20 and October 27 I photographed Shaw Creek. There is only mud in the bottom of the watercourse. There is no water. Crushed trees and limbs are thrown about the wetland area. Mounds and berms of mud and soil are deposited along the watercourse. Excavations appear to have deepened the watercourse by two feet; in some places the depth of the excavations appears to be four feet. There is ample evidence that large tree limbs have been cut on trees within the buffer zone. A herbicide has been applied up to the high water mark of the stream.

Water within the Shaw Creek watercourse is flowing up to the Bainter parcel. Lush and green grass on the low side of the stream indicates that water is in abundance in these soils. There is strong evidence that Mr. Bainter is somehow diverting surface water into soils. The subsurface aquifer at the Bainter site is documented to be just 24-48 inches below the surface. The waters of Shaw Creek are formally impaired, with high counts of fecal bacteria (E. coli). In addition,

there is strong evidence of arsenic contamination of soils and water at the site. Currently there is very serious concern that Mr. Bainter has diverted sewage and arsenic into the subsurface aquifer. Numerous nearby homes have wells that draw upon the aquifer for potable water.

Mr. Thomas Durant is the consultant working with both Bainter and Radke. He has been closely involved with this development and has a great deal of knowledge about the projects. While he does not own the land, he has been involved with all aspects of planning the development.

The City of Yakima has, so far, turned a blind eye to critical area violations; from my perspective the City of Yakima is now legally and financially liable for costs of restoration (along with the developers). My first hope is to create interest at the State and Federal Level. If there is no interest with investigation and prosecution from Ecology or the EPA then I will pursue a Citizen Lawsuit.

Contact information: Matthew Seaman, 8902 Tieton Dr, Yakima WA 98908 cell: 509-307-3298 email: matthew142@msn.com
<mailto:matthew142@msn.com>

On Sep 16, 2014, at 8:30 AM, Redfield-Wilder, Joye (ECY) wrote:

Matthew Anna Lael knows the entire history of the Manastash creek

Anna Lael
District Manager
Kittitas County Conservation District
607 E Mountain View, Ellensburg WA 98926
Phone: (509) 925-8585 ext. 4 Fax: (509) 925-8591

Anna Lael a-lael@conservewa.net <mailto:a-lael@conservewa.net>

-----Original Message-----

From: Matthew Seaman [mailto:Matthew142@msn.com <mailto:Matthew142@msn.com>]
Sent: Monday, September 15, 2014 7:06 PM
To: Redfield-Wilder, Joye (ECY)
Subject: illegal movement of stream

To: Joye Redfield-Wilder
From: Matthew Seaman

I would like to know as much as possible regarding the illegal diversion of Manastash Creek and the destruction of vegetation along the banks. The article for 2012 indicates that a suit was leveled under the Clean Water Act. In Yakima, we have a similar situation where a developer diverted stream waters to a new watercourse without proper permits. And all vegetation along the stream was destroyed. So I need to know about the language within the Clean Water Act that prohibits this kind of stream diversion and habitat destruction. Most of my reading deals with non-permitted discharges into waters. There is not much clear information about illegal stream diversion and habitat destruction under the Clean Water Act.

Classification: UNCLASSIFIED

Caveats: NONE